D.B. CVIL SPECIAL APPEAL NO.928/2006
Chandra Ram & Ors. Vs. Mohan Ram & Ors.

Date : 04.05.2007

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. B.S. Jodha for the appellant.

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Having heard learned counsel for the appellant we are of the opinion that no interference is called for in the order passed by the learned Single Judge rejecting the writ petition filed by the appellant.

The respondent No.1, Mohan Ram filed a suit for permanent injunction for restraining the present appellant from obstructing their right of reaching on public way from their land where a door existed. After filing the suit, notices on application for temporary injunction was served on the respondents.

An application was moved by the plaintiff that after service of notice the defendants closed the door opening from their land to the road and the same may be removed. The said application was rejected by the learned trial Judge and the application for temporary injunction under Order 39 Rule 1 and 2

was also dismissed.

An appeal against the said order was preferred which was allowed by the appellate court and injunction was granted for removing the obstruction made by the defendant during the pendency of the suit. The said order was subjected to the writ petition before this Court and this Court by setting aside the order of learned appellate Judge remitted the matter back to the appellate Judge for deciding the appeal afresh. The learned appellate Judge again after hearing the parties passed a temporary injunction of removing the obstruction which according to him was laid during the pendency of the suit. He also found by referring to the material before it and the circumstances appearing from the site inspection that the obstruction by closing the door opening towards the road mark “C” to “D” in Commissioner's report was closed after filing of the suit so as to defeat the very purpose of filing of suit. In these circumstances, he also found the case in which a mandamus was required to be issued so that no party can over reach the Court by altering the position at site, after receipt of the notice and ordered removal of the obstruction so that the respondent could use the door for reaching road . However, he left both the parties free to use their respective lands by leaving the road open.

The learned Single Judge, when the order was challenged a second time, has dismissed the writ petition.

We are of the opinion that in the facts and circumstances no interference is called for in the temporary injunction order granted by the learned appellate Judge. The apprehension of the appellant that a temporary injunction granted in mandatory form would result in allowing the whole relief in the suit is misconceived. The plaintiff's suit necessarily implies enquiry into the title of the parties for reaching the substantive finding whether the land in question is a part of public way of private property. The interim order passed by the appellate court appears to be just and fair so that no party should be allowed to over reach the process of court.

The appeal is dismissed.

[BHANWAROO KHAN], J. [RAJESH BALIA], J.

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